



House of Representatives

General Assembly

File No. 174

February Session, 2016

Substitute House Bill No. 5232

House of Representatives, March 24, 2016

The Committee on Insurance and Real Estate reported through REP. MEGNA of the 97th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE INSURERS REHABILITATION AND LIQUIDATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2016*) (a) The provisions of this
2 section shall apply in accordance with Title II of the Dodd-Frank Wall
3 Street Reform and Consumer Protection Act, P.L. 111-203, as amended
4 from time to time, with respect to an insurer that is a covered financial
5 company, as defined in 12 USC 5381, as amended from time to time.

6 (b) The Insurance Commissioner may file a petition with the clerk of
7 the superior court for the judicial district of Hartford for an order
8 authorizing the commissioner to rehabilitate or liquidate a domestic
9 insurer on any one or more of the following grounds:

10 (1) (A) The Secretary of the Treasury of the United States, in
11 consultation with the President of the United States, has determined
12 that the insurer is a financial company that satisfies the requirements
13 of 12 USC 5383(b), as amended from time to time, (B) such insurer has

14 been notified by said Secretary of such determination, and (C) the
15 board of directors or similar governing body of such insurer acquiesces
16 or consents to the appointment of a receiver pursuant to 12 USC
17 5382(a)(1)(A)(i), as amended from time to time. Such acquiescence or
18 consent shall be deemed to be consent to an order of rehabilitation or
19 liquidation;

20 (2) The United States District Court for the District of Columbia has
21 issued an order pursuant to 12 USC 5382(a)(1)(A)(iv)(I), as amended
22 from time to time, granting the petition of said Secretary to appoint a
23 receiver of such insurer under 12 USC 5382(a)(1)(A)(i), as amended
24 from time to time; or

25 (3) A petition by said Secretary concerning such insurer has been
26 granted by operation of law pursuant to 12 USC 5382(a)(1)(A)(v), as
27 amended from time to time.

28 (c) Notwithstanding any other provision of chapter 704c of the
29 general statutes, the superior court for the judicial district of Hartford
30 may grant an order of rehabilitation or liquidation under subsection
31 (b) of this section within twenty-four hours after the commissioner has
32 filed the petition for such order. The filing of the petition shall satisfy
33 the notice requirement to the insurer. The administrative judge of said
34 district shall appoint a single judge to handle the petition and order.

35 (d) (1) If said court does not make a determination on such petition
36 filed by the commissioner within twenty-four hours after such filing,
37 the order of rehabilitation or liquidation shall be deemed granted at
38 the expiration of such twenty-four-hour period. At the time such order
39 is deemed granted under this subdivision, the provisions of chapter
40 704c of the general statutes shall be deemed to be in effect and the
41 commissioner shall be deemed to be appointed as the receiver and
42 have all applicable powers under chapter 704c of the general statutes,
43 regardless of whether said court has entered an order of rehabilitation
44 or liquidation.

45 (2) Said court shall expeditiously enter, if an order for rehabilitation

46 or liquidation is deemed granted pursuant to subdivision (1) of this
47 subsection, an order for rehabilitation or liquidation that (A) is
48 effective as of the date such order is deemed granted pursuant to
49 subdivision (1) of this subsection, and (B) conforms to the provisions
50 for rehabilitation or liquidation, as applicable, under chapter 704c of
51 the general statutes.

52 (e) No order of rehabilitation or liquidation under this section shall
53 be subject to any stay or injunction pending appeal.

54 (f) Nothing in this section shall be construed to supersede or impair
55 any other power or authority of the commissioner or the Superior
56 Court under sections 38a-903 to 38a-961 inclusive, of the general
57 statutes.

58 Sec. 2. Subsection (a) of section 38a-930 of the general statutes is
59 repealed and the following is substituted in lieu thereof (*Effective*
60 *October 1, 2016*):

61 (a) (1) A preference is a transfer of any of the property of an insurer
62 to or for the benefit of a creditor, for or on account of an antecedent
63 debt, made or suffered by the insurer within one year before the filing
64 of a successful petition for liquidation under sections 38a-903 to 38a-
65 961, inclusive, the effect of which transfer may be to enable the creditor
66 to obtain a greater percentage of this debt than another creditor of the
67 same class would receive. If a liquidation order is entered while the
68 insurer is already subject to a rehabilitation order, then such transfers
69 shall be deemed preferences if made or suffered within one year before
70 the filing of the successful petition for rehabilitation, or within two
71 years before the filing of the successful petition for liquidation,
72 whichever time is shorter.

73 (2) Any preference may be avoided by the liquidator if: (A) The
74 insurer was insolvent at the time of the transfer; (B) the transfer was
75 made within four months before the filing of the petition; (C) the
76 creditor receiving it or to be benefited thereby or [his] such creditor's
77 agent acting with reference thereto had, at the time when the transfer

78 was made, reasonable cause to believe that the insurer was insolvent
79 or was about to become insolvent; or (D) the creditor receiving it was
80 an officer, or any employee or attorney or other person who was in fact
81 in a position of comparable influence in the insurer to an officer
82 whether or not [he] such employee, attorney or other person held such
83 position, or any shareholder holding directly or indirectly more than
84 five per [centum] cent of any class of any equity security issued by the
85 insurer, or any other person, firm, corporation, association, or
86 aggregation of persons with whom the insurer did not deal at arm's
87 length.

88 (3) Where the preference is voidable, the liquidator may recover the
89 property, or if it has been converted, its value from any person who
90 has received or converted the property, except where a bona fide
91 purchaser or lienor has given less than fair equivalent value, [he] such
92 purchaser or lienor shall have a lien upon the property to the extent of
93 the consideration actually given by [him] such purchaser or lienor.
94 Where a preference by way of lien or security title is voidable, the
95 court may on due notice order the lien or title to be preserved for the
96 benefit of the estate, in which event the lien or title shall pass to the
97 liquidator.

98 (4) Notwithstanding subdivisions (1) to (3), inclusive, of this
99 subsection, a transfer pursuant to a commutation of a reinsurance
100 agreement that is approved by the commissioner or the
101 commissioner's designated appointee under section 38a-962d shall not
102 be voidable as a preference. For the purposes of this subdivision, a
103 commutation of a reinsurance agreement is the elimination of all
104 present and future obligations between the parties, arising from the
105 reinsurance agreement, in exchange for a current consideration.

106 Sec. 3. Subsection (b) of section 38a-140 of the general statutes is
107 repealed and the following is substituted in lieu thereof (*Effective*
108 *October 1, 2016*):

109 (b) Whenever it appears to the commissioner that any person has
110 committed a violation of sections 38a-129 to 38a-140, inclusive, that so

111 impairs the financial condition of a domestic insurance company as to
 112 threaten insolvency or make the further transaction of business by it
 113 hazardous to its policyholders, creditors, securityholders or the public,
 114 the commissioner may proceed as provided in [section 38a-18] chapter
 115 704c to take possession of the property of such domestic insurance
 116 company and to conduct the business thereof.

117 Sec. 4. Section 38a-18 of the general statutes is repealed. (*Effective*
 118 *October 1, 2016*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	New section
Sec. 2	<i>October 1, 2016</i>	38a-930(a)
Sec. 3	<i>October 1, 2016</i>	38a-140(b)
Sec. 4	<i>October 1, 2016</i>	Repealer section

INS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes several changes to the Insurers Rehabilitation and Liquidation Act to bring it into compliance with national standards. There is no state or municipal impact as these changes concern private insurance requirements.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5232*****AN ACT CONCERNING THE INSURERS REHABILITATION AND LIQUIDATION ACT.*****SUMMARY:**

This bill authorizes the insurance commissioner to file petitions, in accordance with the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), for orders of rehabilitation or liquidation of domestic insurers the U.S. Treasury secretary determines are in default or danger of default and whose failure would have serious adverse effects on the country's financial stability (i.e., "covered financial companies," see BACKGROUND). The petitions are deemed granted no later than 24 hours after the commissioner files them, regardless of any action taken by the court.

The bill also makes several other changes to the state's Insurers Rehabilitation and Liquidation Act (IRLA). It:

1. prohibits an insurer's liquidator from voiding commutation reinsurance agreements approved by the commissioner,
2. repeals an outdated provision on the commissioner's authority to act as a receiver for insolvent and certain other insurers, and
3. makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2016

PETITIONS IN ACCORDANCE WITH THE DODD-FRANK ACT

By law, the commissioner may petition the Superior Court for a rehabilitation or liquidation order under certain circumstances, including when an insurer is in financial distress. The bill (1) creates a parallel process for insurers deemed covered financial companies

under the Dodd-Frank Act and (2) specifies that none of its provisions may be construed to supersede or impair the commissioner's or the Superior Court's authority under IRLA.

Grounds for Petitions for Rehabilitation or Liquidation Orders

The bill allows the insurance commissioner to petition Hartford Superior Court for a rehabilitation or liquidation order for a domestic insurer deemed a covered financial company if the:

1. U.S. Treasury secretary, in consultation with the President, has determined the insurer meets the financial distress criteria under the Dodd-Frank Act, triggering the insurer's orderly liquidation;
2. secretary has notified the insurer of his determination; and
3. insurer's governing body acquiesces or consents to the appointment of a receiver under federal law, which the bill deems as consent to rehabilitation or liquidation orders.

If the company's governing body does not consent, the insurance commissioner may also petition the court if the:

1. U.S. District Court for the District of Columbia finds the secretary's determination that the company meets liquidation criteria is not arbitrary and capricious and issues an order under the Dodd-Frank Act to appoint the Federal Deposit Insurance Corporation (FDIC), or
2. the secretary's petition for rehabilitation or liquidation has been granted under certain federal provisions that deem it granted if the court does not make a determination within 24 hours.

Under federal law, if the insurance commissioner fails to act within 60 days after the secretary deemed an insurer a covered financial company, the FDIC may file a rehabilitation or liquidation order.

Granting Petitions and Notifying Insurers

If the commissioner petitions Hartford Superior Court and one of the above conditions is met, the bill allows the court to grant a rehabilitation or liquidation order within 24 hours of the commissioner's petition, regardless of any other processes specified in IRLA. The bill specifies that the filing of the petition satisfies the notice requirement to the insurer.

The bill (1) requires the Hartford judicial district's administrative judge to appoint a single judge to handle the petition and order and (2) prohibits an order of rehabilitation or liquidation from being subject to any injunction pending appeal.

If the court does not make a determination on the petition within 24 hours of the commissioner filing it, the (1) order is deemed granted at the end of the 24 hour period and (2) commissioner is appointed the company's receiver with all applicable powers under IRLA, regardless of whether the court entered the order.

The court must expeditiously enter an order (1) effective as of the date the order is deemed granted and (2) that conforms to the applicable IRLA provisions.

COMMUTATION REINSURANCE AGREEMENTS

Under current law, an insurer in hazardous financial condition or that meets certain other criteria may be placed under the insurance commissioner's supervision. If the supervised insurer is liquidated, the court-appointed liquidator (e.g., the commissioner) may void certain transfers that unfairly benefit some creditors over others, as long as the transfers are made:

1. within one year of the liquidation date or
2. for insurers already subject to a rehabilitation order, within two years of the rehabilitation petition or one year from the liquidation petition, whichever is shorter.

Under the bill, transfers under commutations of reinsurance

agreements approved by the commissioner or her designee may not be voided. A commutation agreement eliminates all present and future reinsurance obligations between the parties in exchange for current consideration. (Reinsurance transfers one party's insurance risk to another party.)

REPEALER

The bill repeals an outdated provision (CGS § 38a-18) allowing the commissioner to take possession of an insurer in certain situations, including insolvency. This process is also governed by IRLA, which provides more detailed procedures for when and how the commissioner can supervise, rehabilitate, or liquidate an insurance company.

BACKGROUND

The Dodd-Frank Act

The federal Dodd-Frank Act creates a system for the orderly liquidation of failing covered financial companies. Among other things, it requires the liquidation of covered financial companies that are also insurers to follow state law.

If the state insurance commissioner does not file an appropriate order within 60 days of a federal determination that a company meets the required criteria, the FDIC has the authority to (1) file the actions in state court and (2) place the company into liquidation pursuant to state law.

Under federal law, the U.S. Treasury secretary may deem a company a covered financial company if it is in default or danger of default and:

1. its failure under other state or federal law would have serious adverse effects on the country's financial stability;
2. no viable private sector alternative is available to prevent the default;

3. effects on creditors', counterparties', shareholders', or certain other market participants' claims or interests are appropriate considering the impact on the country's financial stability;
4. actions by the treasury secretary and the insurance commissioner would mitigate these effects;
5. a federal regulatory agency has ordered the company to convert all of its convertible debt instruments that are subject to the regulatory order; and
6. it meets the federal law's definition of a financial company.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/11/2016)